

MARK D. ROLLINS,)	
)	
Plaintiff,)	Case No. C08-1431-RAJ-BAT
)	
v.)	
)	
DEPARTMENT OF CORRECTIONS, et.al.,)	REPORT AND
)	RECOMMENDATION
)	
Defendants.)	
)	
)	

Plaintiff alleges that in January, 2008 he was slapped on the side of his face by Grier during “horseplay.” Dkt. 1 (complaint at 3). Shortly thereafter, Grier came up to plaintiff’s cell and said to plaintiff, “I can knock you out . . . and there’s nothing you can do.” *Id.* Grier then left. Since then, plaintiff alleges he has “nightmares.” *Id.* He seeks \$2.5 million for “emotional damages.” *Id.* at 4.

REPORT AND RECOMMENDATION – 1

1 Reform Act ("PLRA"), "[n]o Federal civil action may be brought by a prisoner . . . for mental or
2 emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C.
3 § 1997e(e); *see also Oliver v. Keller*, 289 F.3d 623, 627 (9th Cir. 2002). The requisite physical
4 injury must be more than *de minimis* for purposes of § 1997e(e). *Id.* at 628. Here plaintiff does
5 not allege he was physically injured. Rather, he alleges he suffered "emotional damages" based
6 on Grier's statements. The only physical contact between plaintiff and Grier was the slap during
7 "horseplay" but plaintiff makes no claim that the slap caused any physical injury.

8 Based on the deficiencies in plaintiff's complaint, his *in forma pauperis* application should
9 be denied and this action should be dismissed without prejudice. If plaintiff believes that the
10 deficiencies outlined herein can be cured by amendment to his complaint, he should lodge an
11 amended complaint as part of his objections, if any, to this Report and Recommendation. A
12 proposed Order of Dismissal accompanies this Report and Recommendation.

13 DATED this 28th day of October, 2008.

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16 BRIAN A. TSUCHIDA
17 United States Magistrate Judge
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